

CHAPTER 16A
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

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Sec. 16A-1. Short title.

This chapter shall be known and may be cited as the "Purchase of Development Rights ("PDR") Program."
(Ord. No. 194, 11-27-01)

Sec. 16A-2. Purpose.

The purposes of this chapter include, but are not limited to:

- (1) Establishing a program enabling the county to acquire conservation easements voluntarily offered by owners to serve as one means of assuring that James City County's resources are protected and efficiently used;
- (2) Establishing and preserving open-space and the rural character of the county;
- (3) Preserving farm and forest land;
- (4) Conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources;
- (5) Conserving and protecting biodiversity and wildlife and aquatic habitat;
- (6) Assisting in shaping the character and direction of the development of the community;
- (7) Improving the quality of life for the inhabitants of the county; and
- (8) Promoting recreation and tourism through the preservation of scenic and historical resources.

State law reference B Va. Code § 10.1-1700 et seq.
(Ord. No. 194, 11-27-01)

Sec. 16A-3. Applicability.

The PDR program shall be available for all qualifying lands in the county, except those lands under the ownership or control of the United States of America, the Commonwealth of Virginia, or an agency or instrumentality thereof. Any conservation easement acquired pursuant to this chapter shall be voluntarily offered by the owner.

(Ord. No. 194, 11-27-01)

Sec. 16A-4. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter:

Administrator. Administrator is that person placed in a managerial position over the daily operations of the PDR program. The administrator shall serve as a direct liaison to the program.

Board. The Board of Supervisors of James City County.

Conservation easement. A nonpossessory interest in one or more parcels by one or more qualified easement holders under section 16A-10(d) of the Code of the County of James City acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.), whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or donation pursuant to the PDR program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or parcels, assuring availability for agricultural, forestal, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of the parcel or parcels.

Dwelling. Any structure which is designed for use for residential purposes.

Owner. The owner or owners of the freehold interest of the parcel.

Parcel. A lot or tract of land, lawfully recorded in the clerk's office of the circuit court of the City of Williamsburg and County of James City. A conservation easement may contain one or more parcels, for purposes of this chapter the term "parcel" shall include all parcels covered by, or proposed to be covered by, the conservation easement.

Purchase of development rights (PDR) guidelines. The current guidelines document as approved by the purchase of development rights committee, the county administrator, the manager of development management, and the community services manager.

(Ord. No. 194, 11-27-01; Ord. No. 194-1, 12-11-07)

Sec. 16A-5. Designation of program administrator; powers and duties.

(a) *Designation.* The administrator shall report to the assistant manager of community services.

(b) *Powers and duties.* The administrator shall administer the PDR program and shall have powers and duties to:

(1) Establish reasonable and standard procedures and forms consistent with this chapter for the administration and implementation of the program.

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2) Promote the program, in cooperation with the PDR committee, by providing educational materials to the public and conducting informational meetings.

(3) Investigate and pursue, in conjunction with the county, state, federal and other programs available to provide additional public and private resources to fund the program and to maximize private participation.

(4) Evaluate all applications to determine their eligibility and their ranking score, rank applications based on their ranking score, and make recommendations thereon to the PDR committee.

(5) Coordinate the preparation of appraisals.

(6) Negotiate with owner relating to conservation easement terms and value.

(7) Provide staff support to the board, the PDR committee, and the appraisal review committee.

(8) For each conservation easement accepted into the program, establish baseline data, and assure that the terms and conditions of the easement are monitored and complied with by coordinating a monitoring program with each easement holder. (Ord. No. 194, 11-27-01)

Sec. 16A-6. Purchase of development rights program committee established; powers and duties.

(a) *Establishment.* The PDR committee is hereby established, as follows:

(1) The committee shall consist of five members appointed by the board. Each member shall be a property owner in and of James City County. The committee should, but is not required to be, comprised of members who are knowledgeable in the fields of conservation, conservation biology, planning, real estate, land appraisal, farming and forestry and may also include members of conservation easement holding agencies and conservation organizations.

(2) The members of the committee shall serve at the pleasure of the board. The initial terms of the members shall be as follows: two members shall be for one year; two members shall be for two years; and one member shall be for three years. Each term after the initial term shall be for three years.

(3) The members of the committee shall serve without pay, but the board may, in its discretion, reimburse members for actual and necessary expenses incurred in the performance of his/her duties.

(4) The committee shall elect a chairman, vice chairman and secretary at its first meeting each calendar year. The secretary need not be a member of the committee.

(5) The administrator shall be an ex officio member of the committee.

(b) *Powers and duties.* The PDR committee shall have the powers and duties to:

(1) Promote the program, in cooperation and under the guidance of the administrator, by providing educational materials to the public and conducting informational meetings.

(2) Review the ranking of applications recommended by the administrator, and make recommendations to the administrator and the board as to which conservation easements should be purchased.

(3) Annually review the program's eligibility and ranking criteria and recommend to the administrator any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

(4) A quorum shall consist of three members present and the committee shall operate on a "majority rule" basis.

(5) Develop and annually update a purchase of development rights guideline document which shall guide the purchase of development rights committee in its review.

(Ord. No. 194, 11-27-01; Ord. No. 194-1, 12-11-07)

Sec. 16A-7. Appraisal review committee established; powers and duties.

(a) *Establishment.* The appraisal review committee is hereby established, as provided herein:

(1) An appraisal review committee shall be created as a subcommittee of the PDR committee and operate directly under its supervision.

(2) The subcommittee shall consist of a minimum of three members. The subcommittee shall be comprised of at least one real estate professional, one member of the PDR committee, and the county assessor. The members shall be appointed by the PDR committee.

(3) The members of the subcommittee shall serve at the pleasure of the PDR committee. Each member, other than the county assessor, shall serve a one year term. The county assessor shall be a permanent member of the subcommittee.

(4) The county assessor shall be the chairman of the subcommittee.

(b) *Powers and duties.*

The appraisal review committee shall have the power and duty to review appraisals to assure they are consistent with appropriate appraisal guidelines and practices, and to make recommendations thereon to the PDR committee, and provide final approved appraisal results to the PDR committee, and the administrator.
(Ord. No. 194, 11-27-01)

Sec. 16A-8. Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must meet the following criteria: (i) the use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; (ii) the proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in section 16A-10, unless modified by the board; and (iii) the parcel must be located in the County of James City.

(Ord. No. 194, 11-27-01)

Sec. 16A-9. Ranking system.

In order to effectuate the purposes of this chapter, parcels for which conservation easement applications have been received shall be evaluated by utilizing a ranking system. The initial ranking system and changes to the ranking system shall be approved by the county administrator, the manager of development management, and the community services manager. The ranking system may be used to prioritize the acquisition of conservation easements.

(Ord. No. 194, 11-27-01; Ord. No. 194-1, 12-11-07)

Sec. 16A-10. Conservation easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 et seq.) and this chapter. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:

(a) *Restriction on dwellings and subdivision.* The PDR Guidelines shall apply on matters involving dwellings and future subdivision.

(b) *Conservation easement duration.* A conservation easement acquired under the terms of this chapter shall be perpetual.

(c) *Other restrictions.* In addition to the foregoing, the parcel shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) accumulation of trash and junk; (ii) grading, blasting or earth removal; (iii) conduct of industrial or commercial activities on the parcel that would make its use inconsistent with the intent and purposes of this ordinance; and (iv) monitoring of the easement.

(d) *Designation of easement holders.* The county shall be the easement holder, and if designated by the board, one or more other public bodies, as defined in Virginia Code Section 10.1-1700, or one or more organizations then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, shall also be an easement holder.

(Ord. No. 194, 11-27-01)

Sec. 16A-11. Application and evaluation procedure.

Each application for a conservation easement shall be processed and evaluated as follows:

(a) *Application; program materials to be provided to owner.* The application materials provided by the administrator to an owner shall include, at a minimum, a standard application form and information about the PDR program.

(b) *Application form.* Each application shall be submitted to the administrator on a standard form prepared by the administrator. The application form shall require, at a minimum, that the owner provide: the names of all owners of the parcel, the address and telephone number of each owner, the acreage of the parcel, the James City County tax map and parcel number, the zoning designation of the parcel, and permission for

the administrator and an independent appraiser and such other staff as may be appropriate to enter the property after reasonable notice to the owner to evaluate the parcel, and for the county assessor or an independent appraiser to appraise the property. The application form shall also include a space for an owner to indicate whether he/she volunteers to have his parcel be subject to greater restrictions than those contained in the standard deed of easement, and to delineate those voluntary, additional restrictions.

(c) *Additional application information required by administrator.* The administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; (ii) the ranking of the parcel; and (iii) the value of such easement.

(d) *Submittal of application.* Applications shall be submitted to the administrator. An application fee may be required. An application may be submitted at any time during an open application period. However, applications received after an open application period deadline, shall be held by the administrator until the next open application period.

(e) *Evaluation by administrator.* The administrator shall evaluate each application received and determine whether the application is complete. If the application is incomplete, the administrator shall inform the owner in writing of the information that must be submitted in order for the application to be deemed complete. When an application is deemed complete, the administrator shall determine whether the parcel satisfies the eligibility criteria set forth in section 16A-8 and, if it does, shall determine the number of points to be attributed to the parcel by applying the ranking system in accordance with section 16A-9. The administrator shall then rank each parcel with the parcel scoring the most points being the highest ranked and descending there from. The administrator shall submit the list of ranked parcels to the PDR committee after each open application period.

(f) *Evaluation by PDR committee.* The PDR committee shall review the list of ranked parcels submitted by the administrator. The PDR committee shall forward to the administrator and the board recommendations of which conservation easements should be purchased.

(g) *Evaluation by board.* The board shall review the list of ranked parcels submitted by the PDR committee and identify on which parcels it desires conservation easements. The board shall then prioritize the parcels on which it will seek to purchase conservation easements. Nothing in this chapter shall obligate the board to purchase a conservation easement on any property that is eligible for purchase.

(h) *Requirements and deadlines may be waived.* Any requirement or deadline set forth in this chapter may be waived by the board if, for good cause, it is shown that urgent circumstances exist that warrant consideration of an application. Under such circumstances, the board may purchase a conservation easement at any time it deems necessary.

(i) *Reapplication.* An owner of a parcel not selected by the board for purchase of a conservation easement may reapply in any future open application period.
(Ord. No. 194, 11-27-01)

Sec. 16 A-12. Purchase of development rights procedure.

Each purchase of a conservation easement shall proceed as follows:

(a) *Identification of initial pool.* From the list of parcels received under section 16A-11, the board shall designate the initial pool of parcels identified for conservation easements to be purchased.

(b) Determining purchase price. Negotiations with the property owners regarding the easement terms shall be coordinated by the administrator. Upon completion of these negotiations, the administrator shall arrange for an appraisal of the properties by the county assessor or an independent appraiser. Each completed appraisal shall be submitted to the administrator. The results of the appraisal shall be reviewed by the appraisal review committee which shall review and approve each appraisal. Final approved appraisal results shall be provided to the PDR committee and the administrator.

(c) Invitation to sell. The county administrator shall invite the owner of each parcel included in the initial pool of parcels to sell to the county a conservation easement on that parcel for an amount based upon the appraised value of such conservation easement, subject to the terms and conditions of a proposed deed of easement. The invitation to sell shall be in writing and shall include the purchase price, the proposed deed of easement, and the date by which a written offer must be received by the administrator in order to be accepted. The invitation may contain a form offer to be returned by the owner if the owner desires to sell a conservation easement.

(d) Offer to sell. Each owner who desires to sell and/or donate a conservation easement shall submit a written offer that must be received by the administrator by the date contained in the invitation to sell. The offer should include a statement that substantially states the following: "(The owner) offers to sell and/or donate a conservation easement to the County of James City, Virginia for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to sell." Nothing in this chapter shall compel an owner to submit an offer to sell.

(e) Acceptance. An offer to sell a conservation easement shall be accepted by the board in writing, following an action by the board authorizing acceptance.

(f) Conservation easement established. A conservation easement shall be established when the owner and an authorized representative of the holder of the easement have each signed the deed of easement. The deed shall be recorded in the office of the clerk of the circuit court of the City of Williamsburg and County of James City. A single conservation easement may be established for more than one parcel under the same ownership.

(g) Offers not made; offers not accepted; invitation to other owners. If an owner invited to sell elects not to do so, or if the offer to sell is not accepted by the board, then the county administrator may send an invitation to sell to the owner(s) of the next highest prioritized parcel(s) remaining on the list of parcels identified in section 16A-11(g).

(h) Costs. If the board accepts an offer to sell a conservation easement, the county shall pay the grantor=s tax, if any, and the county may pay all other costs, including environmental site assessments, surveys, recording costs, if any, and other charges associated with closing. However, the county shall not pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or other advice, or expenses or fees in connection with the release and subordination of liens to the easement purchased by the county. (Ord. No. 194, 11-27-01)

Sec. 16A-13. Restriction on buy-back; extinguishment and exchange of easements.

(a) Restriction on buy-back. The owner shall not have the option to reacquire any property rights relinquished under the conservation easement, except as provided hereafter, the deed of easement may allow an exchange of easements as follows:

(1) Petition to board. Upon the expiration of 25 years from the date on which a conservation easement was recorded, the owner or successor in interest to the property which is subject to the easement may petition the board for the extinguishment of such easement in exchange for the conveyance to the county of a conservation easement on a different parcel of property meeting all of the eligibility requirements as set forth in section 16A-8.

(2) Requirements. No such extinguishment and exchange of easement shall be authorized, unless a majority of the board find that:

(i) The extinguishment and exchange is determined to be essential to the orderly development and growth of the county;

(ii) The extinguishment and exchange is in accordance with the comprehensive plan for the county in effect at the time of the extinguishment and exchange;

(iii) The extinguishment and exchange does not adversely affect the county's interests in accomplishing the purposes of this ordinance;

(iv) There is substituted other real property which is (a) of at least equal fair market value and at least equal acreage; (b) of greater value as permanent open-space land than the land upon which the easement is extinguished, (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land upon which the easement is extinguished and (d) is in accordance with the Virginia Open-Space Land Act, (Virginia Code §10.1-1700 et seq.).

(3) Expenses. The petitioner shall bear all expenses and fees in connection with the exchange, including, but not limited to purchase of the substituted easement, site assessments, surveys, closing costs, recording fees and taxes, title search, and title insurance if required.
(Ord. No. 194, 11-27-01)